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55, 129 N. W. 158. See *Western Savings Fund Society v. City of Philadelphia*, 31 Pa. 175, 183. It is generally said, however, that a water company, whether municipal or private, is liable for furnishing unwholesome water only on proof of negligence. See *Green v. Ashland Water Co.*, 101 Wis. 258, 263; 77 N. W. 722, 724; *Hayes v. Torrington Water Co.*, 88 Conn. 609, 612, 92 Atl. 406, 407. See also 3 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 1316.

STARE DECISIS — THE EXTENT OF THE DOCTRINE. — The plaintiff was injured in an accident caused by a defective wheel on an automobile, manufactured by the defendant, but purchased from a retail dealer. A judgment for the plaintiff in the District Court was reversed at a prior hearing before the Circuit Court on the ground that no right of action existed although the defendant was negligent. The plaintiff now brings error to the Circuit Court from a judgment for the defendant. *Held*, that a cause of action does exist. *Johnson v. Cadillac Motor Car Co.*, 261 Fed. 878 (C. C. A.), reversing 221 Fed. 801.

Proceedings were instituted to disbar an attorney under a California statute (1916 FAIRALL'S CODE CIV. PROC., §§ 287, 288, 289). A certain construction had been given to these sections by a series of decisions extending over a period of thirty-five years. *Held*, that this construction can be changed only by the legislature. *In re Riccardi*, 189 Pac. 694 (Cal.).

For a discussion of these cases, see NOTES, p. 74, *supra*.

STATUTE OF FRAUDS — ORAL WAIVER OF CONDITION IN WRITTEN CONTRACT. — The plaintiff and the defendant drew up a written contract for the exchange of land free from any incumbrances. Subsequently, and prior to the date when performance was due, the parties orally agreed upon the substitution of a deposit of money for the removal of any incumbrances. In reliance upon that understanding, the plaintiff allowed an incumbrance to remain on his property on the date when performance was due. The defendant refused to perform. Plaintiff sues for breach of contract and defendant sets up the Statute of Frauds. *Held*, that the plaintiff can recover. *Imperator Realty Co. v. Tull*, 127 N. E. 263 (N. Y.).

A defendant, who prevents or hinders the performance of an obligation upon which his liability depends, is precluded from interposing such non-performance as a defense to an action on the contract. *United States v. Peck*, 102 U. S. 64; *Patterson v. Meyerhofer*, 204 N. Y. 96, 97 N. E. 472. The plaintiff's excuse for non-performance is equally effective when he relies on the defendant's sanction to dispense with such performance. *Hirsch Rolling Mill Co. v. Milwaukee & Fox River Valley Ry. Co.*, 165 Wis. 220, 161 N. W. 741; *Neppach v. Oregon & C. R. Co.*, 46 Ore. 374, 80 Pac. 482. However, it is essential that the plaintiff could and would have performed the condition, had it not been for the permission of the defendant. *McCalley v. Otey*, 99 Ala. 584, 12 So. 406; *Shank v. Groff*, 45 W. Va. 543, 32 S. E. 248. The plaintiff is excused because it is unjust that the defendant take advantage of the failure which he himself caused. Therefore, an oral waiver of a condition in a written contract within the Statute of Frauds should also excuse the plaintiff's non-performance. *Scheerschmidt v. Smith*, 74 Minn. 224, 77 N. W. 34; *Hirsch Rolling Mill Co. v. Milwaukee & Fox River Valley Ry. Co.*, *supra*. The Statute of Frauds is satisfied because the action is on the written contract. The oral understanding is introduced only to excuse the plaintiff's non-performance of a condition. Cf. *Rosenfeld v. Standard Bottling & Extracts Co.*, 232 Mass. 239, 122 N. E. 299.

STATUTES — IMPEACHMENT OF STATUTES — ADMISSIBILITY OF HOUSE JOURNALS. The constitution of Georgia provides: "No bill or resolution ap-